REMARKS

The present application has been reviewed in light of the Office Action mailed May 20, 2009. Claims 1-24 are currently pending in the application, with independent claims 1 and 23 having been amended herein, and with claims 16-22 having been previously withdrawn. No new matter is believed to be introduced by the present amendment. In view of the amendments above and the remarks to follow, reconsideration and allowance of this application are respectfully requested.

Claims 1-15, 23, and 24 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicants have amended independent claims 1 and 23. Applicants believe the rejection of claims 1-15, 23 and 24 under 35 U.S.C. § 112 is now moot. Accordingly, reconsideration of this rejection is respectfully requested.

Claims 1-10, 13-15, 23, and 24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,201,728 to Giampapa (hereinafter referred to as "Giampapa"). Applicants respectfully submit that independent claims 1 and 23 are allowable under 35 U.S.C. § 103 (a) over Giampapa because Giampapa fails to teach each and every feature of claims 1 and 23, as amended herein. Accordingly, Applicants respectfully request withdrawal of the rejections to claims 1 and 23 under 35 U.S.C. § 103(a).

According to § 2143.03 of the MPEP, in order "to establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art."

Independent claim 1, as amended herein, recites a support structure, for use in conjunction with a circular endoscopic stapling instrument having a staple cartridge assembly and an anvil assembly comprising, *inter alia*, an annular ring configured to substantially overlie the at least one annular arrangement of staples of the staple cartridge assembly, the annular ring including an outer annular wall, an inner annular wall and upper and lower walls defining an interior sealed reservoir, and a wound closure material retained in the sealed reservoir and being dispensed therefrom upon penetration by the staples during use.

Similarly, independent claim 23, as amended herein, recites a support structure, for use in conjunction with a circular endoscopic stapling instrument having a staple cartridge assembly and an anvil assembly, comprising, *inter alia*, an annular ring configured to substantially overlie the at least one annular arrangement of staples of the staple cartridge assembly, the annular ring including an outer annular wall, an inner annular wall and upper and lower walls defining an interior sealed reservoir, a wound closure material retained in the reservoir and being dispensed therefrom upon penetration by the staples during use, and at least one removable support spoke integrally connected to and extending diametrically across the inner annular wall.

As seen in Figures 1, 9, and 10 of the present application, which are reproduced below, a support structure 400 is provided for use in conjunction with a circular endoscopic stapling instrument 10 having a staple cartridge assembly 14 and an anvil assembly 16 (as shown below in Figure 1).

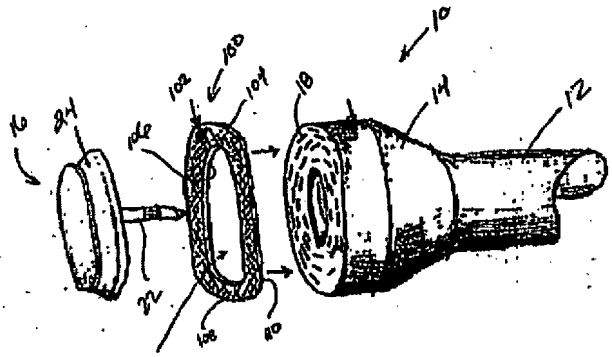


Fig. 1

The support structure includes an annular ring 402 configured to substantially overlie the at least one annular arrangement of staples 20 of the staple cartridge assembly 14. The annular ring 402 includes an outer annular wall 404, an inner annular wall 406 and upper and lower walls 408 and 410 that define an interior sealed reservoir 412 (as shown below in Figure 9). The support structure 400 further includes a wound closure material "W" retained in the sealed reservoir 412. The wound closure material "W" is dispensed from the reservoir 412 upon penetration by the staples 20 during use (as shown below in Figure 10). Support structure 400 may also include at least one removable support spoke 418 integrally connected to and extending diametrically across the inner annular wall 406 (as shown below in Figure 9). (*See* Specification at paragraphs [0072-0077]).

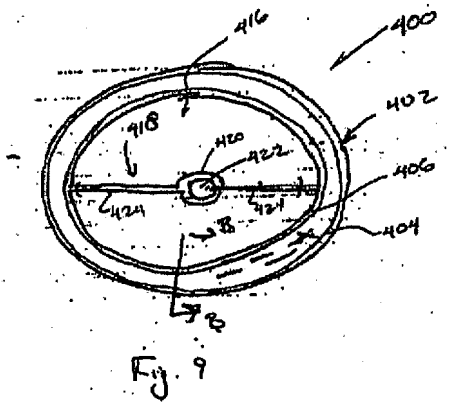


Fig. 9

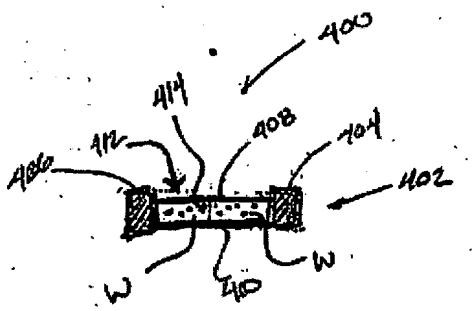


Fig. 10

In contrast thereto, Giampapa discloses an implantable multi-agent delivery system, as shown below in Figures 2 and 6, which includes a pod 10 having multiple pores 14 and chambers 16 (shown in Figure 6) on its surface. The pod 10 is proportioned for subcutaneous implantation beneath the dermis of the skin. The delivery system further includes a dome 26 containing interior chambers 32 which are in fluid communication with the interior chambers 16 of the pod 10. Giampapa further discloses that a plurality of bio-acting agents may be placed within compartments 32 of dome 26 and, after their exhaustion, or upon the election of the physician, dome 26 may, through minor out-patient surgery, be removed from pod 10, refilled, and then re-secured to pod 10. (*See* Giampapa at col. 5, lines 12-18).

FIG. 2.

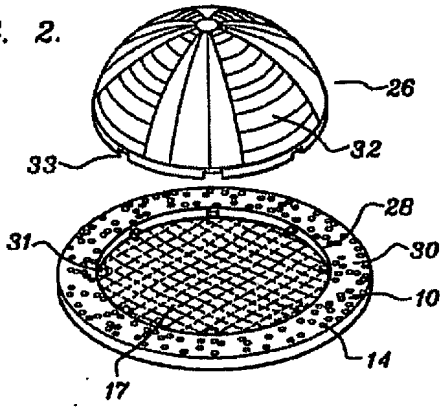
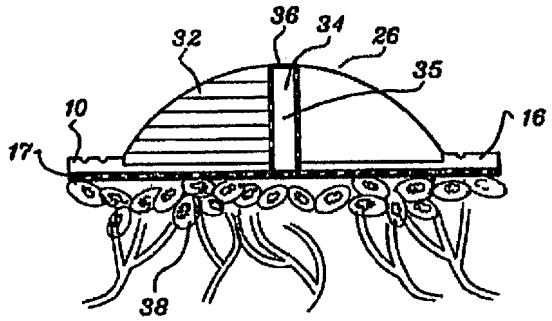
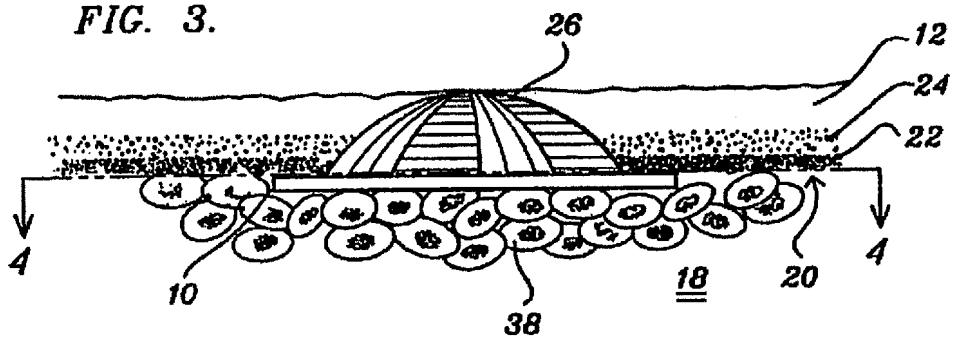


FIG. 6.



In contrast to amended claims 1 and 23, the walls of pod 10, as shown below in Figure 3, "are formed of a porous silicone or polytetraflorothylene to permit ease of ingrowth of capillaries within tissue layer 18 and at subcutaneous border 20." (*See* Giampapa at col. 4, lines 3-6). Thus, pod 10 is not a sealed reservoir as called for in claims 1 and 23. Even assuming, for the sake of argument, that pod 10 and dome 26 are reservoirs, Giampapa does not disclose having a wound closure material retained in the reservoir and being dispensed therefrom upon penetration by the staples during use. Nowhere does Giampapa disclose releasement or dispensation of an agent via penetration by staples during use. Moreover, the disclosure of Giampapa does not teach using pod 10 for the joining of tissue. Instead, as discussed above, Giampapa discloses and teaches pod 10 for use with an implantable multi-agent delivery system.

FIG. 3.



Accordingly, Applicants respectfully submit that independent claims 1 and 23, as amended, are patentably distinguishable over Giampapa and are therefore allowable over Giampapa under 35 U.S.C. § 103(a).

Claims 2-15 depend from claim 1, and each contains all of the features of claim 1, and claim 24 depends from claim 23, and contains all of the features of claim 23. For at least the reasons presented above, Applicants respectfully submit that the subject matter of each of claims 2-15 and 24, as a whole, are also allowable over Giampapa.

Claim 11 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Giampapa in view of U.S. Patent No. 3,855,638 to Pilliar (hereinafter referred to as "Pilliar"). Pilliar was cited by the Examiner to allegedly show a porous material comprising stainless steel or titanium. Pilliar fails to cure the deficiencies of Giampapa with respect to independent claim 1 as discussed above in that Pilliar fails to show or describe "a wound closure material retained in the reservoir and being dispensed therefrom, upon penetration by the staples during use." Thus, for at least the reasons discussed above with respect to claim 1, *inter alia*, Applicants submit that claim 11 is also in condition for allowance.

Moreover, since claim 11 depends indirectly from claim 1 and contains all the features of claim 1, for at least the reasons presented above, Applicants respectfully submit that the subject matter of claim 11, as a whole, is also patentable over Giampapa in view of Pilliar.

Claim 12 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Giampapa in view of U.S. Patent No. 3,739,773 to Schmitt et al. (hereinafter referred to as "Schmitt"). Schmitt was cited by the Examiner to allegedly show an implantable, porous material that is bioabsorbable.

Schmitt fails to cure the deficiencies of Giampapa with respect to independent claim 1 as discussed above in that Schmitt fails to show or describe "a wound closure material retained in the reservoir and being dispensed therefrom, upon penetration by the staples during use." Thus, for at least the reasons discussed above with respect to claim 1, *inter alia*, Applicants submit that claim 12 is also in condition for allowance.

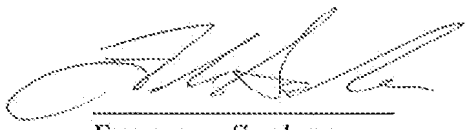
Moreover, since claim 12 depends indirectly from claim 1 and contains all the features of claim 1, for at least the reasons presented above, Applicants respectfully submit that the subject matter of claims 12, as a whole, is also patentable over Blake in view of Taylor.

In view of the foregoing remarks, Applicants submit that all of the claims are in proper format, are patentably distinct from the prior art of record, and are in condition for allowance.

The Examiner is invited to contact the undersigned at the telephone number listed below with any questions concerning this application.

An early and favorable response on the merits is earnestly solicited.

Respectfully submitted,



Francesco Sardone
Reg. No. 47,918
Attorney for Applicants

Carter, DeLuca, Farrell & Schmidt, LLP
445 Broad Hollow Road
Suite 420
Melville, New York 11747
Tel.: 631-501-5700
Fax: 631-501-3526